

## 1. INTRODUCTION

This Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) has been prepared to analyze and disclose potentially significant environmental effects associated with the installation and operation of the Monterey Bay Aquarium Research Institute (MBARI) proposed Monterey Accelerated Research System (MARS) Cabled Observatory Project (Project). This Draft EIR/EIS provides the primary source of environmental information for the lead, responsible, and trustee agencies to consider when exercising any permitting or approval authority related to implementation of the proposed Project. The California Environmental Quality Act (CEQA) lead agency for this Project is the California State Lands Commission (CSLC) and the Monterey Bay National Marine Sanctuary (MBNMS) is the National Environmental Policy Act (NEPA) lead agency.

### 1.1 PROJECT OBJECTIVES, PURPOSE AND NEED

The goal of the Project is to install and operate, in State and Federal waters, an advanced cabled observatory in Monterey Bay that would provide a continuous monitoring presence in the MBNMS as well as serve as the test bed for a state-of-the-art regional ocean observatory, currently one component of the National Science Foundation (NSF) Ocean Observatories Initiative (OOI). The Project would provide real-time communication and continuous power to suites of scientific instruments, which would enable the monitoring of biologically sensitive benthic sites and allow scientific experiments to be performed.

The State CEQA Guidelines (14 CCR §15126.6.a) require that a reasonable range of alternatives to the proposed Project be described and analyzed. Under the Council on Environmental Quality (CEQ) regulations for NEPA (40 CFR §1502.13, Purpose and Need and 40 CFR §1502.14, Alternatives), the document is required to identify the underlying purpose and need to which the lead agency is responding in proposing the alternatives including the proposed Project (40 CFR §1502.13), and present the environmental impacts for the proposed Project and each alternative in comparative form, thus defining the issues and providing a clear choice among alternatives for decision-makers and the public (40 CFR §1502.14). Therefore, to explain the need for the proposed Project, and to guide development and evaluation of alternatives, MBARI (the Applicant) has defined its Project objectives. The Applicant has indicated that the Project objectives are to:

- Test aspects of the regional cabled observatory technology, both for the initial design of the system and during the lifetime of the Project. New systems would

1 be first tested on the Project in Monterey Bay due to the year-round weather  
2 window for marine operations and the proximity to ships and remotely operated  
3 vehicles (ROVs) in Moss Landing. After successful testing on the Project,  
4 systems would be deployed on the more remote North-East Pacific Time Series  
5 Undersea Networked Experiments (NEPTUNE) observatory in the Pacific  
6 Northwest, where the weather window is seasonal and ROVs are infrequently  
7 available;

- 8 • Test methods for education and outreach in partnership with the Monterey Bay  
9 Aquarium, which enjoys a world-class reputation for its innovative programs in  
10 public education;
- 11 • Test deep-water ROV procedures that would later be used for installing and  
12 servicing instruments on NEPTUNE;
- 13 • Serve as an instrument test bed to verify the performance of new instrumentation  
14 under development prior to being deployed on NEPTUNE. These instruments  
15 would be entirely new designs offering advanced capabilities for oceanographic  
16 studies and would be developed at many different institutions across the U.S.  
17 throughout the operational life of the Project;
- 18 • Provide power and high bandwidth real-time communications to a broadband  
19 seismic observatory located on the west side of the San Gregorio fault line. This  
20 would provide a unique and important capability, providing real-time data to the  
21 Berkeley Digital Seismic Network from the only seismometer located to the west  
22 of the fault line. The location of this seismometer would enable improvements in  
23 locating earthquake epicenters and in understanding fault mechanisms; and
- 24 • Provide power and high bandwidth communications to instrumentation that  
25 would: (a) allow long-term in situ studies of chemosynthetic biological  
26 communities on Smooth Ridge, (b) be located in the active upper canyon  
27 enabling better understanding of canyon mass wasting events, (c) enable long-  
28 term monitoring of spatial and temporal variability in parameters such as  
29 temperature and chlorophyll associated with phenomena such as El Niño that  
30 can significantly affect fishery stocks, and (d) enable studies of carbon transport  
31 from the region of primary production in the upper ocean to benthic communities.

32 Section 1.1.1 describes the organizations and areas of scientific interest that have led to  
33 the development of the Project. Section 1.1.2 elaborates on the Project objectives and  
34 provides further discussion on the purpose of the Project. Section 1.1.3 describes the  
35 justifications for the proposed route alignment of the Project in Monterey Bay.

### 1.1.1 Development of the MARS Cabled Observatory

The Applicant, along with the University of Washington, Jet Propulsion Laboratory, and Woods Hole Oceanographic Institution, has received a grant from the NSF to design and install a cabled observatory in Monterey Bay. This observatory would consist of an undersea cable and node that would provide power and high-speed data links for a variety of oceanographic devices.

The Applicant's close relationship with the Monterey Bay Aquarium (MBA) places it in a unique position to employ the Project as an educational tool for the public. The MBA is one of the world's leading organizations devoted to teaching the public about the ocean. The Applicant would bring the Project's science and technology to the public through the MBA's world-class facility, drawing on the expertise of its staff of 420 employees and 900 volunteers. The Applicant would team with the MBA to make scientific results from the Project available, e.g., via the Internet, to students and the general public.

The results of research conducted as part of the Project would be used to make management decisions about resource protection, to develop and improve educational programs, and to help MBNMS, and similar agencies, fulfill their mission of enhancing resource protection and preserving the natural beauty and bounty of the marine ecosystem.

A full description of the components of the Project is provided in Section 2.

### 1.1.2 Purpose and Need for the MARS Cabled Observatory

Two general classes of research would take advantage of the Project. The first class consists of research projects directed at oceanographic features that are particularly well represented in Monterey Bay. Such features include the large and active submarine canyon, well-developed coastal upwelling and associated biological productivity, cold seeps and associated benthic faunas, and tectonic features associated with the eastern edge of the Pacific lithospheric plate. The second class consists of more generic research that could be carried out almost anywhere on topics such as benthic ecology, mixing processes in the interior of the ocean, and food web dynamics in the midwater. The Project would allow researchers in such areas to develop the tools and methods to take advantage of the sea floor power supply and real-time data return and experiment control.

By supplying both data links and electrical power, this network would allow real-time, continuous, and long-term monitoring of conditions beneath the surface of the Monterey Bay. Currently such information can be gathered only during intermittent ship cruises or

1 using temporary devices that must eventually be retrieved when their batteries are  
2 depleted. The system would make use of the tools, techniques, and products  
3 developed over the last several decades for high reliability submarine  
4 telecommunication and military systems to ensure that this system can operate over a  
5 25-year lifetime.

6 In addition to supporting oceanographic research within Monterey Bay, the Project  
7 would serve as a testing ground for technologies to be used in more ambitious  
8 undersea networks, such as the NEPTUNE project ([http://www.neptune.washing-](http://www.neptune.washington.edu)  
9 [ton.edu](http://www.neptune.washington.edu)).

10 The Applicant believes the Project would have broader implications by providing the  
11 oceanographic community with real-time, continuous access to unprecedented  
12 underwater power and communications capability on a regional scale. Benefits would  
13 include more cost-effective collection of much larger amounts of integrated,  
14 multidisciplinary data relevant to important scientific and societal issues, such as natural  
15 hazards, the climate system, the carbon cycle, and other biologically mediated  
16 processes in the ocean. In addition, researchers could use such facilities to explore  
17 entirely new classes of scientific problems in the deep sea currently unapproachable  
18 with existing methods and instrumentation.

### 19 **1.1.3 Purpose and Need for Locating the MARS Cabled Observatory in Monterey** 20 **Bay**

21 According to the Applicant, advantages of locating the Project in Monterey Bay include:

- 22 • Long-term continuous monitoring within the MBNMS would be possible with the  
23 Project. This would enable researchers to better understand episodic processes  
24 that change on the time scales of seconds to centuries. Such episodic  
25 processes control climate change, ocean productivity, basic element cycling, and  
26 the natural hazards that affect a population increasingly concentrated in the  
27 coastal zone;
- 28 • One of the Applicant's joint projects with MBA, Education and Research: Testing  
29 Hypotheses (EARTH), lays new groundwork, providing teachers with means for  
30 integrating real-time data with existing educational standards and tested  
31 curriculum in an interactive and engaging way. EARTH would use real-time data  
32 from MARS to design and test outreach with the Internet as an interface to  
33 scientists, teachers, students, and the public;
- 34 • Monterey Bay has easy access to deep water, which would allow for testing of  
35 the MARS system at deep water depths. The node can be placed in

approximately 1 kilometer depth of water within a 1- to 2-hour transit from Moss Landing Harbor;

- The Applicant has two ships equipped with ROVs berthed at Moss Landing, one of which is nearly always operated as a day boat. Problems with the cabled system or instrumentation on the system can be addressed by ROV visit, if necessary, without waiting weeks to years for a University-National Oceanic Laboratory Ship with ROV capabilities to arrive on site;
- Monterey Bay has a year-round weather window suitable for ROV operations, which is not the case with sites further north. As mentioned above, problems can be quickly addressed without needing to wait for a seasonal weather window; and
- Even after the installation of a regional observatory, the test bed would remain a community resource with daily, year-round access for science experiments and development of advanced instruments and new regional observatory hard/software prior to installing them on the regional observatory.

Another important consideration for placement of the Project in Monterey Bay was that it would provide access to areas of unique scientific interest. Placement of the MARS node on Smooth Ridge provides access to locations appealing to a wide range of scientific disciplines. Some topics of current scientific interest include:

- Oxygen Minimum Zone: The MARS node would be located in close proximity to the oxygen minimum zone. As the name implies, this zone contains a lower concentration of oxygen compared to the zones both above and below this region. In a habitat with few boundaries to dispersion and distribution of biological organisms, the oxygen minimum zone represents a real barrier to movement, and thus, is of significant scientific interest.
- Mixing over topography: Smooth Ridge's abrupt topography provides an environment conducive to the study of flow and margin interactions. Seemingly minor currents provide significant mixing, which is of great interest for further study.
- Chemosynthetic Biological Communities: Deep-sea hydrothermal vents and cold seeps are home to a variety of invertebrate species, many of which exist in symbiotic arrangements with sulfide-oxidizing bacteria. Many of these invertebrates rely entirely on chemoautotrophic symbionts for nutrition, which allows them to live in areas where phototrophic contributions are minimal. In order to maintain successful associations with these bacteria, the invertebrates must meet many unusual demands, normally not experienced by other

1 metazoans. These biochemical demands include the uptake of inorganic carbon  
2 and sulfide, as well as the elimination of bacterial end products, including large  
3 amounts of protons and sulfate ions.

4 Research on these animals continues to reveal further insight into the  
5 astonishing reality that metazoan life can thrive in some of the most hostile and  
6 primitive environments known to science. As these communities are found in  
7 close proximity to the MARS node, further invaluable research would be possible.

- 8 • Seismic studies: The San Gregorio and Monterey Bay Fault zones are the  
9 western-most components of the San Andreas system. Data from battery-  
10 powered offshore instruments have been combined with historical data from the  
11 land-based array to improve both earthquake locations and focal mechanisms.  
12 The seismic data has also provided T-phase information for global earthquakes  
13 and mass wasting events. In 2002, a broadband instrument was deployed in  
14 1000 meters of water at Smooth Ridge.

15 The MARS cable would provide a real-time data link and power for these and  
16 possibly additional instruments. Benefits from real-time data include immediate  
17 incorporation of data into Berkeley Digital Seismic Network, assistance with  
18 earthquake notification, demonstration of importance of offshore stations, and  
19 support for studies of fault mechanics. Additionally, MARS would provide the  
20 ability to position a seismic station on the western side of the San Gregorio fault,  
21 a position of great importance to seismologists.

- 22 • Active turbidity flows in Monterey Canyon: Submarine canyons are considered to  
23 be a major conduit for sediment transport from the continent into the deep sea.  
24 Most scientists agree that the majority of the sediment that passes through  
25 submarine canyons probably moves only in relatively brief sediment transport  
26 events. Some of these events are entirely marine, but some are land-linked.  
27 Examples of marine events include submarine slope failures, e.g., slumps or  
28 slides, that move material from the canyon walls to the canyon floor and may  
29 generate turbidity flow that continue down the canyon. Earthquakes or major  
30 storms may trigger such events.

31 Highly active turbidity events are regularly observed in the Monterey Canyon.  
32 Hyperpycnal flows of the Salinas River have occurred four times in twelve years  
33 at depths to 1200 meters. Other turbidity flows have moved benthic instrument  
34 nodes weighing 1000 kilograms hundreds of meters down the Canyon. The  
35 MARS node is ideally situated, without being at risk, to aid in the study of these  
36 dynamic canyon processes.

- Spatial and temporal variability in the upper ocean: Long term monitoring of parameters such as temperature and chlorophyll can help scientists to identify phenomena such as the pattern known as El Niño. During El Niño years, nutrient supply is reduced, and chlorophyll and productivity levels are accordingly depressed. If El Niño-caused chlorophyll and productivity reductions are spatially predictable, such patterns may have important consequences for the spatial distribution of higher trophic levels and fisheries stocks during El Niño years. MARS would provide opportunities to collect data beyond the capabilities of standard moored instruments to help determine how significant these effects might be.
- Spatial and temporal variability in carbon flux to sediments: Understanding the processes that transport carbon through the ocean is of great scientific importance. The topography on Smooth Ridge provides opportunities to study primary production and particulate organic carbon vertical flux.
- Acoustic signals: The location at Smooth Ridge would allow studies to collect passive acoustic signatures, including frequencies ranging from passing ships to earthquakes to whale calls. Many disciplines could benefit from this ability.

The proposed cable route has also been selected to avoid restricted areas and obstructions. A number of restricted areas and obstructions are located in and around Monterey Bay and the MBNMS and include military zones, protected areas such as marine reserves, anchorage areas, and shipping lanes. Obstructions include buoys, rocks and shoals, wrecks, dumping areas, and unexploded ordinance.

The Applicant selected the cable route with the intention of avoiding or minimizing impacts on sensitive natural resources while still achieving its goal to place the node in an area of scientific interest. This, coupled with a route that attempts to achieve maximum burial, is intended to help minimize impacts on marine resources. Burial of the cable is intended to avoid conflicts with fisheries equipment and help protect the cable from damage.

## 1.2 PURPOSE AND SCOPE OF EIR/EIS

The involvement of a California public agency and a Federal agency requires compliance with both the CEQA and the NEPA. The State CEQA Guidelines and the NEPA regulations encourage the agencies to prepare a single joint EIR and EIS that satisfies both Federal and California laws (Public Resources Code [PRC] § 21083.5, State CEQA Guidelines 14 CCR §15222, and NEPA Regulations 40 CFR §1506.2). This joint EIR/EIS has been prepared to analyze and disclose the potential environmental effects associated with the proposed Project. This EIR/EIS has been

1 prepared pursuant to and in accordance with the requirements of the CEQA and the  
2 NEPA and serves as an informational document for decision-makers and the public to  
3 use during the environmental review process.

4 The EIR/EIS is also intended to inform decision-makers and the general public of the  
5 potential significant environmental impacts of the Project. The EIR/EIS also identifies  
6 possible ways to reduce or avoid significant impacts through mitigation measures and  
7 describes and analyzes feasible alternatives to the Project. Both the CSLC and the  
8 MBNMS will consider the information in this EIR/EIS, along with other information,  
9 before making any decision to consider the implementation of the Project.

10 This EIR/EIS is also intended to be a stand-alone, detailed assessment of feasible  
11 alternatives for the installation of the Project. The format of this EIR/EIS complies with  
12 the CEQA and the NEPA requirements and addresses the relevant environmental  
13 issues raised during public scoping. Project-related consequences are determined by  
14 describing the existing environmental setting, superimposing the Project and any  
15 alternatives on the setting, and then analyzing the impacts that would occur as a  
16 consequence of implementation.

17 Based on review of the previously assembled information, and consideration of the  
18 comments received on the Notice of Preparation (NOP), this EIR/EIS considers two  
19 project alternatives, one utilizing Horizontal Directional Drilling, and the No Project/No  
20 Action Alternative. The Project is described in Section 2 and the Project Alternatives  
21 are described in detail in Section 3.

22 Section 4 addresses the resources and issue areas for which potentially significant  
23 impacts were identified during scoping, which include the following:

- 24 • Air Quality;
- 25 • Commercial and Recreational Fishing;
- 26 • Cultural Resources;
- 27 • Geology and Soils;
- 28 • Marine Biological Resources;
- 29 • Marine Water Quality;
- 30 • Vessel Transportation;
- 31 • Noise; and
- 32 • Environmental Justice.

The CSLC and MBNMS staff have determined that the Project would have a less than significant impact or no impact on the following four issue areas, which are summarized in Section 5. These are:

- Aesthetics;
- Mineral Resources;
- Population and Housing; and
- Public Services.

Sections 4 also recommends mitigation measures, where possible, that would reduce or eliminate significant effects. Pursuant to PRC Section 21081.6, a Mitigation Monitoring Program (MMP) applicable to each of the Project Alternatives, and the proposed Project, has been developed to ensure the implementation of the recommended mitigation measures. The MMP is provided in Section 6.

### **1.3 PUBLIC REVIEW AND COMMENT**

#### **1.3.1 Scoping**

On May 25, 2004, the CSLC filed a NOP of a Draft EIR/EIS and a Notice of Public Scoping Meetings for the Project with the State Clearinghouse (SCH No. 2004051138). The NOP was sent to Federal, State, and local agencies and to interested parties. The NOP provided descriptions of Project activities, objectives, location, and a preliminary identification of potentially significant impacts and issues to be addressed.

On May 25, 2004, a Notice of Intent (NOI) to prepare a joint EIS and EIR for the proposed Project was published in the *Federal Register*. The NOI described the proposed Project, summarized potential environmental issues and alternatives, and announced the Scoping Meeting scheduled for June 9, 2004.

On June 9, 2004, a public Scoping Meeting was held in Moss Landing to provide an opportunity for agency staffs and the public to comment on the NOP and related matters pertaining to the Project.

The CSLC and MBNMS received oral and/or written comments from the following agencies and interested parties:

- Alliance of Communities for Sustainable Fisheries;
- California Department of Fish and Game;
- California Coastal Commission;

- Fishermen's Association of Moss Landing;
- Friends of the Sea Otter;
- Moss Landing Commercial Fishermen's Association;
- Moss Landing Harbor District;
- Ocean Conservancy;
- Pacific Cetacean Group; and
- Save our Shores
- U.S. Environmental Protection Agency.

For a description of written scoping comments received by the CSLC and the MBNMS for this EIR/EIS, see Appendix B.

### **1.3.2 Public Comment on the Draft EIR/EIS**

This Draft EIR/EIS will be distributed for public review and comment in accordance with the CEQA and the NEPA procedures. Copies of this document will be submitted to the California State Clearinghouse and U.S. Environmental Protection Agency (USEPA) for agency distribution. A Notice of Availability will be published in the Federal Register and local newspapers, which will initiate a 45-day public review period. After distribution of the Draft EIR/EIS, a public hearing will be conducted to obtain public comment on the adequacy of the document's discussion of environmental issues. The date, time, and location of the public hearings will be announced in the Federal Register and local newspapers. Public comments and responses thereto will be included in the Final EIR/EIS.

Once the Final EIR/EIS is completed, a Notice of Availability will be published in the Federal Register and local newspapers stipulating that it will be available for the 30-day review period prior to signing a Record of Decision (ROD). The ROD is a written, public record explaining why the MBNMS chose a particular course of action. The selected action and all mitigation measures will be identified in the ROD. Similarly, the CSLC will certify to the adequacy of the Final EIR/EIS and will review the contents of the EIR/EIS prior to its consideration of the Project (CEQA Guidelines § 15090). Furthermore, in the event that the CSLC approves the project, it will make specific findings, pursuant to the CEQA and NEPA, regarding the Project's approval if the Project leads to one or more significant environmental effects.

The proposed Project cannot be initiated before the Final EIR/EIS is certified, the NEPA ROD is signed and approved, and the specific CEQA findings are approved, and the CSLC and responsible agencies approve the Project.

#### **1.4 CONSISTENCY WITH STATE, REGIONAL, AND LOCAL PLANS**

This section discusses the consistency of the Project with relevant plans and policies of various local and regional government agencies. Plans and policies that are applicable to the Project are presented below, and Table 1-1 provides an analysis of the Project's consistency with these plans and policies.

##### **1.4.1 Monterey County General Plan (Monterey County Board of Supervisors, September 1982)**

The General Plan is used in conjunction with the Local Coastal Program (LCP) to establish land use policies for Monterey County. The General Plan addresses various long-range planning topics, such as land use and transportation, for the unincorporated regions of the County. If a conflict or difference arises between the General Plan and LCP, the more restrictive will apply, with the exclusion that it cannot be used to change a land use designation. Currently, the County is updating its General Plan, which is expected to be approved in December 2005.

##### **1.4.2 North County Area Plan (Monterey County Board of Supervisors, July 1985; Updated April 1997)**

The North County Area Plan is paired with the North County Land Use Plan segment of the Local Coastal Program to establish the framework for development and resource conservation in northern Monterey County for the next 20 years. North County is defined as the region north of the Salinas River, Merritt and Espinosa Lakes, the city of Salinas, and Old Stage Road, and is approximately 114 square miles in size. The North County Area Plan addresses every development proposal made in North County, and includes regulations and programs such as zoning regulations, subdivision regulations, capital improvements programming, and project review under the CEQA.

##### **1.4.3 North County Local Coastal Program (LCP) Land Use Plan (Monterey County Board of Supervisors, June 1982, Updated March 1997)**

The North County LCP was created in response to the Coastal Act of 1976, which established a framework for resolving conflicts among competing uses for limited coastal lands. The North County Land Use Plan LCP supercedes previous plans within the coastal zone, including the 1973 Moss Landing Area Development Plan. An updated community plan for Moss Landing is included in the LCP.

**1.4.4 Monterey County Coastal Implementation Plan (Monterey County Board of Supervisors, January 1988)**

Part 2 of the Monterey County Coastal Implementation Plan (Chapter 20.144) includes regulations for development in the North County Land Use Plan Area. These regulations fully implement the policies of the Land Use Plan and apply only to parcels within the North County Coastal Zone, as subject to the Land Use Plan. The Coastal Implementation Plan also addresses development restrictions within Moss Landing.

**1.4.5 Draft 2004 Air Quality Management Plan (Monterey Bay Unified Air Pollution Control District, September 2004)**

The 2004 AQMP updates the 1991 AQMP for the Monterey Bay Area, which was drafted in response to the California Clean Air Act of 1988 that established planning requirements to meet the ozone standard. The 2004 AQMP only addresses attainment of the State ozone standard, while attainment of the PM<sub>10</sub> standard is addressed in the “1998 Report on Attainment of the California Particulate Matter Standards in the Monterey Bay Region”.

**1.4.6 Coastal Act**

The California Coastal Act of 1976 (PRC §30000-30900) aims to preserve, protect, and enhance the California coastal zone as a distinct and valuable natural resource of vital and enduring interest to the people of California. The Legislature declared that the basic goals of the State with respect to the coastal zone are to:

- Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources;
- Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state;
- Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners;
- Assure priority for coastal-dependent and coastal-related development over other development on the coast; and
- Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Chapter 3 of the Act, Coastal Resources Planning and Management Policies, contains the policies by which the adequacy of local coastal plans and the permissibility of proposed developments are determined. Some of the policies specifically addressed by the Act include: providing recreational opportunities and public access to the shoreline (Articles 2 and 3); protecting economic, commercial, and recreational fishing activities (Article 4); and preventing impacts on environmentally sensitive habitat areas, parks, and recreation areas (Article 5).

#### **1.4.7 Moss Landing Harbor District Submerged Land Grant**

The California State Legislature Statutes of 1947, Chapter 1190, granted certain tide and submerged lands, lands beneath navigable waters, and swamp and overflow lands to the Moss Landing Harbor District. The Harbor District's land grant has since been defined as the submerged lands lying between the northern and southern boundaries of the Old Salinas River Channel, and extending 0.4 miles (0.6 kilometers) seaward of the ordinary high-water mark on Monterey Bay (Statutes of California, 1967 Regular Session, Chapter 131). The Moss Landing Harbor District would require a Special Activities Use Permit, e.g. Construction Permit, for any project that would occur within its jurisdiction (Harbor District 2005).

#### **1.4.8 National Marine Sanctuary Program (Title 15, Part 922 United States Code of Federal Regulations) and Monterey Bay National Marine Sanctuary Management Plan**

The MBNMS was designated by the Secretary of Commerce under the authority of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. §§ 1431-1445c) and is managed by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary Program (NSMP) as part of the National Marine Sanctuary System. The NSMP develops management plans for each national marine sanctuary in the system and issues regulations to implement those plans. NMSP regulations are codified at 15 CFR Part 922. The NMSP regulations include prohibitions on specific kinds of activities, descriptions of sanctuary boundaries, and a permitting system to allow certain types of activities to be conducted within sanctuaries that would otherwise be prohibited. In addition to general regulations, each national marine sanctuary has its own set of site-specific regulations within 15 CFR Part 922. The regulations for the MBNMS are found at Subpart M.

Subpart M, Section 922.132 of the regulations provides a list of activities that are prohibited or otherwise regulated within the MBNMS. Among the listed prohibitions, the following prohibited activities may relate to the proposed Project:

- Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed, except as an incidental result of anchoring vessels or installation of navigation aids;
- Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations;
- Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter (with exceptions); or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality (with exceptions); and
- Moving, removing, or injuring, or attempting to move, remove, or injure, a Sanctuary historical resource.

The above-referenced prohibited activities may be conducted if a permit is issued under 15 CFR 922.133 and 15 CFR 922.48 of the regulations. Permit approval is subject to specific conditions, established in 15 CFR 922.133. As to the proposed Project, the Director may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited above, if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will achieve one or more of the following:

- further research related to Sanctuary resources and qualities;
- further the educational, natural or historical resource value of the Sanctuary; or
- assist in managing the Sanctuary.

In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and progress or results of any activity authorized by the permit.

Another policy consideration is the proposed MBNMS Management Plan revision, currently underway. Although the existing regulations and Management Plan directives for MBNMS do not specifically address submerged cables, the Sanctuary is in the process of reviewing and updating its Management Plan. As part of the proposed

1 Management Plan revision, the MBNMS has a draft action plan on how it will evaluate  
 2 submerged cable projects. This draft action plan states, in part, that required burial  
 3 depth and preferred cable laying techniques will be identified. It further states that  
 4 cables should be buried to a depth pre-determined by the project applicant and  
 5 approved by the MBNMS Superintendent. This draft action plan will be taken into  
 6 account as part of the proposed Project review.

7 **Table 1-1. Consistency with Applicable Plans and Policies**

| <b>Responsible Agency</b> | <b>Plan or Policy</b>                 | <b>Project Consistent?</b> | <b>Method of Consistency</b>  |
|---------------------------|---------------------------------------|----------------------------|---|
| County of Monterey        | Monterey County General Plan (1982)   | Yes                        | The Natural Resources Chapter of the General Plan contains Vegetation and Wildlife Habitat Policies applicable to the Project. To be consistent with the Vegetation and Wildlife Habitat Policies 9.2.1 and 9.2.2 of the Plan, the Project would need to monitor activities that would potentially create siltation and pollution in marine waters, as well as consult with appropriate agencies and obtain applicable permits. This includes consultation with CDFG, as required by Ocean Resources Policy 10.1.1. As designed and through acquisition of required permits, the Project would be consistent with these policies. |
| County of Monterey        | North County Area Plan (1985)         | Yes                        | The Plan lists policies that are supplemental to the Monterey County General Plan and are specific to the characteristics of the North County Area. The Project would not harm environmentally sensitive areas as defined by the Plan and, therefore, would be consistent with the Plan.  |
| County of Monterey        | North County LCP Land Use Plan (1982) | Yes                        | The Plan is intended to protect the overall quality of the Coastal Zone environment and to maximize public access to the coastal areas. Consistency with this would be achieved through consultation with appropriate local agencies and by obtaining applicable local permits.   |

| <b>Responsible Agency</b>                           | <b>Plan or Policy</b>                                      | <b>Project Consistent?</b>                | <b>Method of Consistency</b>   |
|---|--|---|--|
| County of Monterey                                  | Monterey County Coastal Implementation Plan (1987)         | Yes                                       | The Plan establishes regulations for development along the coastal zone that fully implement the policies of the North County LCP Land Use Plan. Consistency with this would be achieved through consultation with appropriate local agencies and by obtaining applicable local permits.                           |
| Monterey Bay Unified Air Pollution Control District | Draft 2004 Air Quality Management Plan                     | Yes                                       | Short-term construction emissions would be consistent with regional, State, and federal air quality requirements and accommodated within the plan for attaining ambient air quality standards. No notable emissions would occur during long term operation.  |
| California Coastal Commission (CCC)                 | California Coastal Act (1976)                              | Yes, with CDP approval                    | Project consistency with the Coastal Act and the North County LCP will need to be established in order for the County to issue a CDP. At this time, no inconsistencies have been identified.   |
| Moss Landing Harbor District                        | Moss Landing Harbor District Submerged Land Grant          | Yes, with Harbor District permit approval | After review of the Harbor District's land grant and discussions with District staff, no conflicts with the land grant have been identified.   |
| MBNMS   | National Marine Sanctuary Program (Title 15, Part 922 CFR) | Yes, with MBNMS permit approval           | The Program prohibits certain activities that would harm or put at risk the Sanctuary or its resources. Various otherwise prohibited activities in the Sanctuary may be permitted with approval of a permit by the MBNMS. The Applicant has applied for a permit under Sections 922.133 and 922.48 of the Program. |